IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7956 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALTAF SHABBHIRBHAI ARAB

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 11.6.2000, Annexure-A, in respect of petitioner passed by respondent no. 1 in exercise of his powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the grounds of detention, the petitioner-detenu is a 'dangerous person' within the meaning of section 2(c) of the Act and, that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for

arriving at a subjective satisfaction, the detaining authority has placed reliance on three IPC cases lodged in Panigate Police Station, Baroda city. Out of that three cases, one case is pending in the court awaiting trial, whereas two IPC cases are pending with the Investigating Officer for investigation. The detaining authority has also placed reliance on the statements of three anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, that three statements were verified by the detaining authority on 3.6.2000 and he passed an order of detention on 11.6.2000, which is challenged in this writ petition.

2. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to the main petition, controverting the grounds of attack mentioned in the memo of petition.

3. Ms. DR Kachhavah learned advocate for the petitioner has argued that the petitioner-detenu has made two representations, one to the Hon'ble Chief Minister, Gujarat State, through his advocate on 5.7.2000 and another representation to the detaining authority. It appears that as the period of 12 days was over, the detaining authority forwarded that representation to the Government under his covering letter on 7.7.2000. Ms. DR Kachhavah has argued that though the State Government has received the representation made by the petitioner which has been forwarded by the detaining authority has not been decided by the Government and, thus, the respondent no. 2 has violated the mandate given in Article 22(5) of the Constitution. That representation has remained undecided even till today. Thus, from this admitted position, the order which is challenged in this petition is illegal and same requires to be set aside.

4. Mr Uday Bhatt learned AGP has argued that the representation made to the Government has already been decided by the Government on 24.7.2000 and it has been communicated to the detenu on the same day.

5. The respondent no. 2 - State Government has not explained the delay period in between 7.7.2000 and 24.7.2000 and, therefore, this delay invalidates the order of detention. Ms. DR Kachhavah learned advocate has cited an authority of Harish Pahwa vs. State of U.P. & Ors., reported in AIR 1981 SC 1126 in support of her case. This case falls within four corners of said cited case.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 11.6.2000, passed by respondent no. 2, in respect of detenu, is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody, for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H MEHTA, J.)

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